



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1995

Mr. Ivan J. Mlachak
Feldman & Associates
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR95-1216

Dear Mr. Mlachak:

As counsel for the Clear Creek Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 28981.

The school district received a request for an audio tape of an interview of an applicant for employment with the school district. The interview was conducted in accordance with a script or interview guide the school district purchased from the Gallup Organization ("Gallup"). We are informed that the interview guide is part of the Gallup Teacher Perceiver System, a structured interview method developed by Gallup to identify individuals with the skills, knowledge, and abilities to be outstanding educators. The school district asserts that it may withhold the requested audio tape from required public disclosure under sections 552.101 and 552.110 of the Government Code as a trade secret.

Section 552.110 of the Government Code excepts a trade secret from required public disclosure. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business

A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

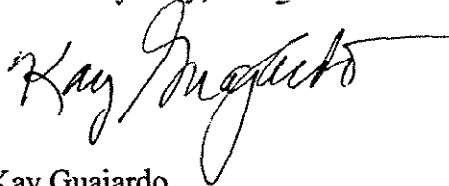
RESTATEMENT OF TORTS § 757 cmt. b (1939). The Restatement also lists the following six factors to be considered in determining whether particular information constitutes a trade secret:

(1) the extent to which the information is known outside of [the company's] business; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and to [its] competitors; (5) the amount of effort or money expended by [the company] in developing this information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Id. We have considered the arguments of both Gallup and the school district. We conclude that Gallup's Teacher Perceiver System is a trade secret. Therefore, since the questions used by the interviewer on the audio tape are trade secrets, the school district may withhold the tape from required public disclosure based on section 552.110 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a stylized flourish extending from the end.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 28981

cc: Ms. Malcolm Quarles
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